

MANDATORY STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of the:)	
)	
Application for Certification)	Docket No.
for the Rio Mesa Solar)	11-AFC-04
Electric Generating Facility)	
<hr/>)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 20, 2012

11:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

COMMITTEE MEMBERS PRESENT

Carla Peterman, Presiding Member

Karen Douglas, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kourtney Vaccaro, Hearing Officer

Kenneth Celli, Hearing Officer

Eileen Allen, Technical Advisor for Facility Siting

Jim Bartridge, Advisor to Commissioner Peterman

Galen Lemei, Advisor to Commissioner Douglas

CEC STAFF AND CONSULTANTS PRESENT

Lisa De Carlo, Staff Counsel

Pierre Martinez, Project Manager

APPLICANT

Christopher T. Ellison, Esq.
Brian Biering, Esq. (via WebEx)
Ellison, Schneider & Harris

Todd Stewart
BrightSource Energy, Inc.

Kevin Bertrand
BrightSource Energy, Inc.

Andrea Grenier
Grenier & Associates, Inc.

Angela Leiba (via WebEx)
Arleen Garcia-Herbst (via WebEx)
John Dillon (via WebEx)
URS

INTERVENOR

Lisa Belenky (via WebEx)
Center for Biological Diversity

ALSO PRESENT

Cedric Perry
Bureau of Land Management

Janna A. Scott
ESA Energy
Consultant to Bureau of Land Management

Tiffany North (via WebEx)
Office of Riverside County Counsel
County of Riverside

Jody Fraser (via WebEx)
U.S. Fish & Wildlife Service

I N D E X

	<u>Page</u>
1. Call to Order	1
2. Party Questions and Comments	4
3. Public Comment	54
4. Adjourn	56
Certificates of Reporter and Transcriber	57

P R O C E E D I N G S

11:04 a.m.

1
2
3 PRESIDING MEMBER PETERMAN: Welcome to the
4 Committee Meeting for the Mesa Solar Electric Generating
5 Facility. This is Commissioner Peterman; I am Lead
6 Commissioner on this case. The Associate Commissioner on
7 this project is Commissioner Douglas. She is sitting to my
8 left. To my immediate left we have our Hearing Officer
9 Kourtney Vaccaro. I'll just introduce everyone here from
10 our side and then we will turn to all the parties to
11 introduce themselves.

12 To my right I have my advisor, Jim Bartridge.
13 Also here we have Galen Lemei, advisor to Commissioner
14 Douglas, and we also have Eileen Allen, the Commissioners'
15 technical advisor for facility siting. We also have Ken
16 Celli here who will be the Hearing Advisor going forward and
17 I guess we'll speak more to that later. So let's take a
18 second now and have everyone introduce themselves.
19 Applicant, would you like to start first?

20 MR. ELLISON: Thank you, Commissioner Peterman.
21 Good morning to the entire Committee. My name is
22 Christopher Ellison, Ellison, Schneider & Harris,
23 representing the applicant, BrightSource.

24 MR. STEWART: Good morning, my name is Todd
25 Stewart, I am the project manager for BrightSource.

1 MS. GRENIER: Good morning, Andrea Grenier,
2 permitting consultant to BrightSource.

3 MR. BERTRAND: Good morning, Kevin Bertrand,
4 assistant project manager for BrightSource.

5 MR. MARTINEZ: Pierre Martinez, project manager
6 for the Energy Commission.

7 MS. De CARLO: Good morning, Lisa De Carlo, Energy
8 Commission staff counsel.

9 HEARING OFFICER VACCARO: And I believe Lisa
10 Belenky, do we have you on the phone line?

11 MS. BELENKY: Yes, this is Lisa Belenky for the
12 intervenor Center for Biological Diversity. And I will be
13 on mute most of the time so it might take a second to
14 respond.

15 HEARING OFFICER VACCARO: Great, thank you. One
16 thing I would ask, though. When you do speak if you could
17 project just a bit. I think we were all having a little bit
18 of difficulty hearing you, the court reporter in particular.

19 MS. BELENKY: Okay.

20 HEARING OFFICER VACCARO: Thank you.

21 MS. BELENKY: I'll try to speak up more. Is that
22 better?

23 HEARING OFFICER VACCARO: Yes, that's much better,
24 thank you.

25 I think we have heard from the parties,

1 introductions from the parties. At this stage we like to
2 know if we have any representatives of local, state or
3 federal agencies in the room or on the line who would like
4 to introduce themselves. I believe we do have such
5 individuals today so we'll start with the room first, if you
6 would like to introduce yourself, anyone. We have a
7 microphone on the other side of Ms. De Carlo, it's go the
8 red light already on.

9 MR. PERRY: Yes, Cedric Perry, Bureau of Land
10 Management, California Desert District.

11 HEARING OFFICER VACCARO: Thank you. Is there
12 anyone else? I see a number of people in the room and I am
13 not sure what the affiliation is but I suspect we'll find
14 out soon enough. But if any of you represent an entity
15 other than the Energy Commission and wish to introduce
16 yourselves at this time this would be a good time to do so.

17 I see absolutely no takers, blank faces trying to
18 avoid eye contact, so I'll turn to the telephone. If there
19 are any such individuals on the phone who would like to
20 introduce themselves at this time we appreciate that.

21 MS. NORTH: Good morning, Tiffany North for
22 Riverside County.

23 HEARING OFFICER VACCARO: Thank you. Anyone else?

24 MS. LEIBA: You've got Angela Leiba, Arleen
25 Garcia-Herbst and John Dillon from URS.

1 MR. BIERING: Brian Biering with Ellison,
2 Schneider & Harris on behalf of the applicant.

3 HEARING OFFICER VACCARO: Okay. And you know --
4 thank you. I don't mean to do a round robin on everyone on
5 the phone but thank you, those of you who did state your
6 appearances. Right now I am just trying to stick with the
7 local, state and federal agencies. So do we have any more
8 of them on the telephone?

9 MS. FRASER: Hi, this is Jody Fraser with the US
10 Fish and Wildlife Service.

11 HEARING OFFICER VACCARO: Thank you.

12 Okay, it sounds like we don't have anybody else
13 rushing to the microphone or to their telephone at this time
14 so I think we'll just go ahead and get started with today's
15 proceedings.

16 I think there is a little bit of foreshadowing
17 when we did the introductions this morning and identified
18 Hearing Advisor Celli. For those of you who aren't aware,
19 this Friday is my last day here with the Energy Commission
20 so we are transitioning this case to another hearing
21 advisor. So I guess basically from this day forward turn
22 all, you know, procedural and other questions over to
23 Hearing Advisor Celli. Of course it will be formalized in a
24 memorandum of assignment within the next few days.

25 Sometimes I think you will notice when we have

1 status conferences we ask the parties to go ahead and
2 prepare a status conference statement, give us all kinds of
3 information. Generally, it's bounded by specific topics or
4 questions that are pertinent.

5 I think all of you know sort of where we are as we
6 sit here today but the Committee may not be as up to speed
7 as the parties are. And that really is one of the primary
8 purposes for today's proceeding. To make the formal
9 transition, to get the lay of the land so that Hearing
10 Advisor Celli starts off, you know, hitting the ground
11 running.

12 But also getting, I think, a better understanding
13 of some proposed changes that the applicant is looking to
14 make, what the timing is. Because I think that goes
15 directly to a recent request by staff for an extension of
16 the discovery period. So far folks have indicated they have
17 no objection to that.

18 I don't have an objection but I have a concern
19 with an extension of time for something that hasn't yet been
20 filed or relating to something that hasn't yet been filed.
21 So I just want to talk about that a little bit today. The
22 Committee wants to understand that a little bit more as
23 well. And to find out what we think some of the next steps
24 might be once we hear from the applicant and what its plans
25 are for filing a new project description and changes to the

1 project.

2 So I think with that we are going to start with
3 you, Mr. Ellison. And if you can sort of touch on all of
4 those topics and anything else that you think is pertinent.

5 MR. ELLISON: Thank you, Ms. Vaccaro, I'd be happy
6 to do that. Let me begin by thanking you for your exemplary
7 service, not just in this case but in other cases that we
8 have worked with you on and we wish you well. And to
9 welcome Mr. Celli, who we have also worked with I know will
10 be a more than capable replacement.

11 As Ms. Vaccaro has alluded to, since the Committee
12 last met, as I am sure all parties are aware, the applicant
13 has proposed a significant reduction in the size of the
14 project. We did that essentially eliminating the third
15 project, RMS III. We did that at the suggestion of the
16 Bureau of Land Management to streamline the permitting and
17 stay on schedule.

18 There are certainly a loss of benefits when we do
19 this in the project but there was also a significant
20 reduction in impacts, which we believe helps address some of
21 the concerns that have been raised so far. And we believe
22 it should make the staff's task easier rather than more
23 complicated. But that being said, it is a significant
24 change and we are filing some significant documents
25 documenting that change and Mr. Stewart is prepared to

1 discuss in detail exactly what is going to be filed and
2 when.

3 We do not object to the staff's request for an
4 additional 60 days of discovery given the change. With the
5 understanding, and this is important, that staff is not
6 proposing to change the overall schedule of the proceeding
7 but only the discovery period. We concur with that.

8 So that being said, we are certainly available for
9 any questions. And in particular we are prepared to discuss
10 at the Committee's pleasure the details of what we are
11 submitting, when we are submitting it and those sorts of
12 things.

13 HEARING OFFICER VACCARO: Okay, thank you. Just
14 as a point of clarification before we hear a little bit more
15 about what's going to be filed and when. I think I had just
16 mentioned that there was this request from staff for an
17 extension of the 180 day period within which data requests
18 can be submitted.

19 But I think by staff's admission and by my own
20 calculations, that day ran -- I mean, the cutoff was
21 6/11/2012, wasn't it? So we are really not truly talking, I
22 think, about extending the discovery period for 60 days for
23 a document that really might not come in until the 58th day
24 of the 60 day extension. I think more precisely we are
25 talking about having a period of time after this

1 documentation comes in that would allow staff and Center for
2 Biological Diversity to submit data requests. I just want
3 to make sure that's really what we're talking about. And
4 that if that is the clarification, to make sure that that,
5 that you have no objection to that. So, Ms. De Carlo.

6 MS. De CARLO: Yes, and I apologize if our filing
7 wasn't clear. We did request 60 days from the date of
8 submittal of the official project change document.

9 HEARING OFFICER VACCARO: So basically it's a
10 reopening of the discovery period to allow you to conduct
11 discovery on this newly filed submission.

12 MS. De CARLO: Correct.

13 HEARING OFFICER VACCARO: Okay.

14 MS. De CARLO: And we have -- in our filing we
15 indicated that as of the date of our filing of the request
16 we didn't anticipate a change to the PSA date. However, we
17 have recently received additional information that has
18 caused us to reconsider that. And Mr. Martinez, our project
19 manager, can go into more detail about that.

20 HEARING OFFICER VACCARO: Yes. I'm curious,
21 especially because we haven't received a filing yet. So why
22 don't we turn back over to the applicant and hear what you
23 need to tell us about what is going to be filed and when so
24 I think that we get a better sense of the time line and then
25 it will be interesting to hear what Mr. Martinez has to say.

1 MR. ELLISON: Okay, let me preface -- and
2 Mr. Stewart can talk about exactly what's going to be filed
3 and when but let me preface this by saying that this is news
4 to us. We did not understand the discovery request
5 extension to be as it is now described, nor did we
6 understand until literally this morning that staff was going
7 to propose a change in the PSA date. So at least for the
8 moment as we consider this new information we would have to
9 file an objection to those -- to that, to preserve all our
10 options and preserve our rights.

11 That being said let me say one other thing. The
12 changes that we are making are all within the scope of the
13 original project and are reducing it. There is essentially
14 no significant -- there is certainly no significant new
15 land, there's no significant new impacts, there's nothing of
16 that nature that we are aware of.

17 So we do understand that the staff may have some
18 questions but this is not the kind of change that we think
19 should do anything other than reduce the scope of the
20 previously filed data requests. I don't think there should
21 be any significant new issues.

22 That being said, let me ask Mr. Stewart to address
23 what we're filing. And it's not going to be just one
24 document, we're trying to get staff as much information as
25 we can as fast as we can. So as soon as something, a

1 chapter is ready, we're giving it to staff. So it's going
2 to come in not in one document but in multiple documents.

3 MR. STEWART: Thank you. We had a teleconference
4 with the staff a number of weeks ago to review the specific
5 methodology and format in which we were to submit our
6 updated information to staff. And I submitted an example of
7 the project description as modified to remove Unit III and
8 went over that with staff and staff counsel and received an
9 affirmative that that would be an acceptable way to submit
10 the information.

11 Subsequent to that I submitted to staff a schedule
12 for submittal of electronic documents ahead of our formal
13 submittal so that the staff would not be quite as anxious
14 awaiting all of the information that is upcoming. That was
15 provided to staff last week.

16 In summary, we are looking at submitting the
17 information in four tranches. The first submittal, the
18 first five chapters, will actually be submitted tomorrow.

19 HEARING OFFICER VACCARO: The first how many?

20 MR. STEWART: The first five chapters. The second
21 seven chapters will be submitted on July the 10th and the
22 balance of the chapters will then be submitted
23 electronically on the 23rd and then all of the hard copies
24 will be in Sacramento by no later than the 25th of July.

25 HEARING OFFICER VACCARO: Just sort of as a point

1 of clarification. My understanding, and please correct me,
2 Mr. Ellison, if I'm wrong, is that what you're doing is
3 focusing now solely on On-site Alternative 3; is that
4 correct, in terms of the revised project description? Isn't
5 it On-site Alternative 3?

6 MR. ELLISON: There are a couple of nuances to
7 that but I believe that's correct.

8 HEARING OFFICER VACCARO: But maybe you could tell
9 us what some of those nuances are.

10 MR. ELLISON: Well, there are some what I would
11 characterize, and Mr. Stewart you can jump in and correct
12 me, But there are some slight reconfigurations in the nature
13 of substation areas and the layout of the gen-tie line, some
14 things like that. That are made possible by the elimination
15 of RMS III. You want to expand on that?

16 MR. STEWART: Yes, thank you. The nuances are the
17 relocation of the common, the permanent common area
18 facilities from east of the Western, the Western
19 transmission line and North Baja gas transmission line over
20 to the west side of those facilities and locating them in
21 the very northeastern reach of our Unit I Solar Field.

22 What this does is it removes all of the permanent
23 facilities for the project from the east side of the western
24 area transmission line. Which opens up the BLM north/south
25 corridor on that site completely as we don't have any, any

1 permanent facilities that would encroach upon that side of
2 the corridor.

3 The other nuance that we have is we have switched
4 our primary and secondary access roads from what they were
5 before. Previously we were using an access road as an
6 extension of 34th street as our primary access and the
7 existing Bradshaw Trail as our secondary access. And with
8 the removal of Unit III it made more sense to use Bradshaw
9 Trail as our primary access since we are not proposing any
10 relocation of that trail anymore, simply an improvement of
11 that trail. It provides better and more immediate access to
12 the project site.

13 And then for 34th Street we are adjusting the
14 route of that so that it has fewer impacts on the storm
15 water that exits a fairly substantial wash that goes across
16 our project and goes up on the mesa on the south side of
17 that wash, which provides -- it's an environmentally
18 superior alternative for an access route.

19 The third thing is, again, because we removed Unit
20 III is we are relocating the natural gas tap and meter
21 station down directly east Unit I as opposed to up in the
22 corner of -- between -- at the northeast corner of the
23 project site. Again, for purposes of the natural gas tap
24 and meter station, it is very similar terrain there but it
25 lessens the amount of disturbance that we would have to do

1 on the project site for gas distribution pipelines. And
2 that's it.

3 HEARING OFFICER VACCARO: Okay, thank you. Any
4 questions of the applicant right now from either Committee
5 Member?

6 ASSOCIATE MEMBER DOUGLAS: I think you answered
7 this question with your response to the Hearing Officer's
8 question but I just wanted to make sure. The modified
9 proposal does not change the layout or location of the two
10 towers in Units I and II. The changes you're talking about
11 are the natural gas pipelines, the gen-tie and the access
12 road?

13 MR. STEWART: That is correct. The power blocks
14 and specifically the power towers remain exactly in the
15 location as they were before.

16 ASSOCIATE MEMBER DOUGLAS: Thank you.

17 HEARING OFFICER VACCARO: Ms. De Carlo or
18 Mr. Martinez?

19 MR. MARTINEZ: Well I think as the applicant has
20 explained it that's, you know, a fair characterization of
21 what's transpired over the past probably four to six weeks
22 since they made us aware that they were going to have a
23 change. And I think we have been working really well and
24 cooperatively in trying to provide feedback on what would be
25 acceptable to us and what would allow us to try to maintain

1 the schedule, knowing that there's going to be some changes.

2 And as Todd had indicated, he provided a project
3 description kind of in Track Changes to really show us an
4 example of what all the other subsequent sections would look
5 like coming in so that staff would clearly know what the
6 change is and they could focus their attention on that item.

7 And so we on our side as the project manager, you
8 know, I've attempted to keep staff focused on preparing
9 their sections now and with the understanding that there's
10 going to be some changes, a little bit of rewriting. Maybe
11 it's not too much rewriting, just kind of cleanup towards
12 the end.

13 And some time when the applicant formally
14 submitted their statement that they were going to -- there
15 was going to be a project change, the expectation was that
16 that information would be provided by early July. And some
17 of these sections that the applicant alluded to would be
18 coming in in a draft form earlier to the extent that that
19 was possible but the full package would come in early July.

20 So even understanding that we were pressed to try
21 to make a late August PSA, you know, filing but we were
22 still trying to do that.

23 I think it was Friday of last week Todd sent me an
24 updated schedule of when the information was going to be
25 submitted to us. There's a good portion of sections that

1 deal with, you know, big issues like Biological Resources
2 that are all the way to the latest submittal, July 25th.
3 And I'll just take biology as an example because that's
4 probably one of the most cumbersome and lengthier, you know,
5 sections that you're familiar with.

6 We're working closely with the Fish and Wildlife
7 Service, Fish and Game, BLM, the read group as we've
8 referred to in the past, on a lot of issues related to
9 biology. And our intent is to circulate draft sections or
10 at least discussions relating to their areas of expertise so
11 that we, we have a, you know, a good PSA that has their
12 input. And that takes time to get to the -- you know, write
13 the section early, get it to them for their review, get the
14 feedback, do any rewrite if necessary and then circulate it
15 also through our own internal process.

16 If we don't get that information until late July
17 -- you know, that process takes 45, 60 days between when we
18 draft it and give it to them to review and what have you and
19 all the way to, you know, reviewing it at the PM level,
20 council level and getting it formatted and prepared for
21 filing.

22 HEARING OFFICER VACCARO: Well what if we shift
23 the paradigm, right? Staff drafts based on what they have.
24 All these other agencies are going to review the PSA and
25 they'll also be reviewing what the applicant submits. And

1 they are, of course, always free and welcome; in fact in
2 some instances have a duty to review and to make comments on
3 the information.

4 So if you were able to receive their input, even
5 if it was on the PSA as opposed to being incorporated into
6 the PSA so that it could be incorporated into the FSA and
7 most certainly incorporated into the evidentiary hearing,
8 how does that affect what you're saying and your ability to
9 meet the time line?

10 Because I think there are a lot of very clear
11 statements made by the Committee in the scheduling order in
12 terms of delineating the roles of the Committee, the
13 Commission and the staff in presenting information. And
14 understanding, I think it's sort of implicit that the PSA
15 might not be entirely complete and everyone is expecting
16 completion to the extent possible by the time of the FSA.

17 So I hear everything you're saying but it seems to
18 me it is only looking at one model of how this might happen
19 and I think we need to be looking at some other models.
20 Because the Committee itself committed to issuing a PMPD by
21 a certain time line after delineating everybody's roles and
22 responsibilities. So I think with that as the framework, if
23 we shift the paradigm a little bit let's see what that, what
24 that does. Ms. De Carlo, you look like you're ready to
25 answer that.

1 MS. De CARLO: I think our fundamental concern
2 with the revised schedule that we have been given from the
3 applicant about their submittals is that we won't have time
4 internally to adjust our PSA sections to reflect a new
5 project. That there is a limited amount of time for the
6 significant technical sections, Cultural Resources,
7 Biological Resources, some of the others, to ensure that
8 what we end up publishing accurately reflects the revised
9 project and the potential impacts.

10 If I could just clarify. At this point we are not
11 asking the Committee today to make a decision on this. We
12 just wanted to give you guys a heads-up that at some point
13 once we receive the submittal we'll be making a request for
14 a potential change to the PSA date and then we -- and I
15 think it will be easier to discuss that once we have the
16 information in front of us and once staff has a better idea
17 of what the potential time line we would need to actually
18 incorporate the proposed changes.

19 HEARING OFFICER VACCARO: Thank you for clarifying
20 that. I think we understood that. I think what we are
21 doing right now is probably having a discussion that is
22 going to help inform whatever it is that the staff might
23 submit to the Committee.

24 I guess I -- you know, I am not a technical
25 person, I think I've said that many times in various

1 proceedings, and sometimes I feel like I might be the
2 slowest one in the room on some of these items. But here is
3 where I'm a little perplexed. We have an AFC that's
4 submitted that already identifies Alternative 3 within the
5 AFC. It's something that staff is supposed to be evaluating
6 in the alternatives analysis anyhow. And a number of
7 factors that are included with Alternative 3 are already
8 within what staff is supposed to be doing.

9 So I understand the nuance that was raised by
10 Mr. Stewart or the term "nuance." And I don't know that it
11 really is a nuance. Nuance seems to sort of perhaps
12 downplay significance and so I am just using the word that
13 he chose. I don't know if this is "nuance" or if these
14 really might be significant things.

15 And so I get those three items. Perhaps there are
16 some more things that aren't yet known without fully seeing
17 the document. But assuming that staff is already doing this
18 analysis. Now we know that staff was analyzing the universe
19 that is now -- it was originally this big, huge box that has
20 now been reduced.

21 That doesn't mean that it's necessarily reduced by
22 a third in terms of impacts and the like and I think the
23 Committee gets that. But I am not sure what's being added
24 to staff's workload or burden such that the original
25 analysis that staff was doing isn't already part of this

1 process, but for the three items that Mr. Stewart just
2 alluded to. So could you kind of help me understand that?

3 MS. De CARLO: Well one of the big things is the
4 change in the common facilities. We don't know where
5 they're moving. We're anticipating getting a PDOC for air
6 quality. That'll be delayed because of the change. So
7 that's one big component that I don't believe was reflected
8 in the Alternative 3 proposal.

9 Additionally the Alternative 3 proposal is a small
10 fraction of an analysis compared to the actual project
11 proposal. So I think the bulk of the work is going to go
12 through, okay, how have the impacts changed, you know, going
13 through it? How much microfill woodland will now be
14 impacted with the new proposal versus the old proposal?
15 Where would those be?

16 I think it is just going through and determining
17 what we can rule out as being impacted in addition to what
18 extent the movement of the common facilities has changed any
19 of the other, any of the other impacts. And unfortunately
20 we don't know to what extent that is going to take time
21 until we actually have the proposed change in writing in
22 front of us.

23 MR. MARTINEZ: The other thing to consider here is
24 just the logistics of getting the product out. I guess I'll
25 go back and say we never thought we would have a complete

1 PSA anyway. That was understood. There's a lot of cultural
2 issues, the biological surveys were not going to be
3 completed, and so we would just give you the best that we
4 could give you, you know, based on the schedule that we had.

5 So that was understood, we weren't going to try to get a
6 complete application.

7 But, you know, typically as a project manager I
8 like 30 days before the filing date of the PSA to have a
9 section for review. So technical staff has to provide it to
10 their seniors before that, okay. So it's usually, maybe a
11 couple of weeks when the technical staff finishes their
12 section, gives it to their senior. It gets probably kicked
13 back from the senior back to technical staff for some edits.

14 Then it goes to the office manager of environmental or
15 engineering, maybe some more technical, you know, edits or
16 what have you. That gets cleaned up and then it comes to
17 me.

18 So if we get stuff July 25th and I want to publish
19 August 30th, okay, technical staff has to complete their
20 analysis in mid-July internally to start giving it to their
21 seniors and management for review. They will have not been
22 able to incorporate this information.

23 Even assuming that we got the information in early
24 July, I was giving some staff as late as mid-August to give
25 me a section for review. Alternatives can't be done until

1 everyone else has done all their stuff and the Alternatives
2 author reviews everyone's stuff to find out what's
3 significant and what have you.

4 I mean, there's kind of this logistical process to
5 preparing a document and it makes it very difficult the
6 later the submittal is, no matter how conceptually it seem
7 easy to understand the change is maybe conceptually minimal
8 and less than what was anticipated. The logistics of
9 creating the document doesn't change.

10 HEARING OFFICER VACCARO: Okay, that completely
11 resonates with me. I mean, I'm obviously not the decision-
12 maker here, I'm just sort of the facilitator.

13 But let's assume then that we go with the model
14 that I presented. You don't have the full amount of time to
15 get all of the comments from all the reviewing agencies in
16 order to incorporate it into the PSA but we know that we
17 will be getting those comments from those entities but they
18 are very involved in this process and I think sort of they
19 are going to continue to work in a fashion where their
20 comments are accounted for by both the applicant, Center for
21 Biological Diversity and staff. So let's pretend we are
22 going to do that.

23 You are saying no matter what, even if we do that,
24 you have got a bureaucratic issue that you have got to deal
25 with that really goes to the ability to put out hard copy or

1 to put out an e-version of a document.

2 MR. MARTINEZ: Yeah. I mean, I wouldn't refer to
3 it as a bureaucratic issue, it's a logistical issue. I
4 mean, it's the same thing, you know, on the applicant's side
5 if they need to put a document together. There's just --

6 HEARING OFFICER VACCARO: Okay, you have a
7 hierarchy of review.

8 MR. MARTINEZ: Exactly.

9 HEARING OFFICER VACCARO: Does that sound a little
10 less pejorative?

11 MR. MARTINEZ: Yes.

12 HEARING OFFICER VACCARO: Okay. (Laughter.) I
13 mean, to me, I wasn't using it as a pejorative but clearly
14 it was being taken that way. So I guess what I'm saying is
15 you've got a problem with process that you see that's
16 impacted by these documents coming in so late in your time
17 line of check-offs for sections being able to get out of the
18 door.

19 MR. MARTINEZ: That's correct.

20 HEARING OFFICER VACCARO: Okay.

21 MR. MARTINEZ: And the other thing I might add.
22 Again, we were trying to do it with an early July -- it was
23 going to be very tight even with an early July submittal
24 from the applicant. This is not the only work that staff is
25 working on. I know you know that.

1 You know, the Hidden Hills project FSA is due in
2 August as well and there's other competing priorities. And
3 so again, even with an early July expectation for submittal
4 of the information we were squeezed, in my opinion, as much
5 as we can be squeezed.

6 This document likely is going to be on the order
7 of 1,000 pages or more. I have to review every single page
8 of that, you know. Ms. De Carlo has to review all that as
9 well. You just don't flip, you know, sections that are, you
10 know, 200 pages, in one day and then the next person in one
11 day and then the next person in one day and then get it
12 rewritten. It just logistically is very, very difficult and
13 there's an opportunity for errors.

14 You know, certainly the proposal or the suggestion
15 that Ms. Vaccaro is suggesting that maybe a PSA that is not
16 complete will catch up with it in the FSA is a scenario that
17 could be, you know, taken. There's just going to be more
18 holes than there would have been otherwise, and there was
19 that understanding.

20 PRESIDING MEMBER PETERMAN: Hearing Officer, if I
21 may. Applicant, can you remind the Committee what sections
22 actually are coming in at the end of July? Are these the
23 cultural and biological ones with the most concern?

24 MR. STEWART: Thank you, Commissioner. The
25 sections that are coming in, I'll start with the ones on the

1 10th. Cultural Resources is coming in on July the 10th.
2 Land Use, Noise, Paleontological, Project Description,
3 Transmission System Engineering and Natural Gas Supply all
4 coming in on the 10th. The ones that are coming in --

5 MS. BELENKY: I think the WebEx is maybe cutting
6 out.

7 MALE SPEAKER: Yeah, I'm having the same thing.

8 HEARING OFFICER VACCARO: Are you not hearing us
9 or it's fading in and out?

10 MALE SPEAKER: It's cutting on and off.

11 HEARING OFFICER VACCARO: Okay, we'll get that
12 looked into as best we can. I think we'll continue to move
13 forward, we will have people project, and in the meantime
14 we'll try to get this worked out.

15 PRESIDING MEMBER PETERMAN: Ask them what they
16 last heard.

17 HEARING OFFICER VACCARO: Commissioner Peterman
18 would like to know what it is that you last heard. So,
19 Ms. Belenky, could you tell us what it is that you heard
20 when it started to cut out?

21 MS. BELENKY: I did hear the discussion from staff
22 about the issues with creating the document. It just cut
23 out like little pieces a couple of times.

24 HEARING OFFICER VACCARO: Okay, so --

25 MS. BELENKY: And I also would like to make a

1 comment at some point on this towards the end of the
2 session.

3 HEARING OFFICER VACCARO: Of course. We start
4 with the applicant, we move to staff and, of course, the
5 other parties always get their opportunity to speak and ask
6 questions as well. I think -- we just haven't gotten to
7 that part yet, Ms. Belenky.

8 Okay, so Mr. Stewart, if you would, just start
9 again. You were identifying for us that on July 10th there
10 are a number of technical sections that will be submitted to
11 staff. If you could please project. Be as close as you can
12 to the microphone. And if you would start again from there
13 we'd appreciate it.

14 MR. STEWART: Thank you. Can everyone hear me
15 now? Okay, good.

16 HEARING OFFICER CELLI: No, it's not showing.
17 Keep talking, I just want to --

18 MR. STEWART: Okay.

19 HEARING OFFICER CELLI: This one that says Maggie
20 Read should be showing. Can you ask and see whether
21 Ms. Belenky can hear.

22 HEARING OFFICER VACCARO: This is Hearing Advisor
23 Vaccaro again asking, I'm just sort of doing an audio test
24 again. Ms. Belenky, are you able to hear me?

25 MS. BELENKY: I heard you but I -- I heard you but

1 I didn't hear the response from --

2 HEARING OFFICER VACCARO: So you didn't hear
3 Mr. Stewart at all then?

4 MS. BELENKY: No.

5 HEARING OFFICER VACCARO: Okay, we are going to
6 try another microphone and see if that might make a
7 difference.

8 MR. STEWART: Does this work better?

9 MS. BELENKY: Yes.

10 HEARING OFFICER VACCARO: Excellent. Okay, thank
11 you.

12 MR. STEWART: Thank you. I'll go through the
13 groups as we are going to submit them. Beginning with Group
14 1 which is -- we are issuing tomorrow will be Geologic
15 Hazards, Hazardous Material, Soils, Waste Management and
16 Worker Safety. Group 2 --

17 PRESIDING MEMBER PETERMAN: Can you go a little
18 slower.

19 MR. STEWART: I'm sorry. Group 1 is Geologic
20 Hazards, Hazardous Material, Soils, Waste Management and
21 Worker Safety.

22 Group 2 to be submitted on Tuesday, July the 10th,
23 includes Cultural Resources, Paleontological Resources, Land
24 Use, Noise, Transmission System Engineering, Natural Gas
25 Supply and the Project Description.

1 Group 3, which is an electronic submittal on the
2 23rd of July, as is Group 4, is Biological Resources,
3 Socioeconomics, Traffic, Visual Resources and Water.

4 The final, the final three include the Cumulative
5 Impacts, Alternatives and then the Executive Summary.

6 PRESIDING MEMBER PETERMAN: And what were the
7 dates on those last two?

8 MR. STEWART: They will all come in on the 23rd
9 electronically. Those last eight come in on the 23rd of
10 July electronically and then on the 25th with all the hard
11 copies.

12 MR. MARTINEZ: Just to clarify --

13 MR. STEWART: I'm sorry, I missed -- I'm getting
14 coached here. I missed Air Quality and that one is coming
15 in also on the 23rd.

16 MR. MARTINEZ: And Public Health?

17 MR. STEWART: And Public Health. Those two may be
18 together.

19 MR. MARTINEZ: Okay.

20 MR. STEWART: Yes.

21 HEARING OFFICER VACCARO: Okay, I think for those
22 of you on the phone, thanks for your indulgence. We sort of
23 had some looking around the room and some sort of between-
24 mic clarification to ensure that people understood what
25 Mr. Stewart said. Please rest assured there is a court

1 reporter here whose job is to transcribe what is being said
2 so all of this will be captured in the record if you somehow
3 missed what Mr. Stewart said.

4 Because I think it's best at this time if we move
5 forward with -- we have the lay of the land. I think the
6 understanding is that we originally asked staff to produce a
7 PSA in August. What we are hearing is that the applicant is
8 making -- I'm not sure what adjective to use so I will just
9 say changes to the project description and the project that
10 are going to require further analysis by staff. And
11 unfortunately the written documentation of those changes
12 will not be coming in until July. Even though they are
13 staggered dates pretty much in July, it's in July. We had
14 anticipated an August publication date.

15 I think Mr. Martinez and Ms. De Carlo have given
16 us a sense of some of the concerns that staff has in meeting
17 an August deadline. I don't hear anything affecting the
18 deadline at the end of the schedule that was submitted by the
19 Committee at this point. I think the first milestone is
20 really the PSA. Notwithstanding the look on Ms. De Carlo's
21 face the PSA is the first milestone and I think that's the
22 one that everybody needs to keep their focus on.

23 I think what we can anticipate from staff, based
24 on this conversation, is some creative problem-solving that
25 allows them to work through the layers of review to do the

1 analysis that technical staff needs to do in order to review
2 what the applicant is submitting. Perhaps staff could
3 consider things like instead of serial review, concurrent
4 reviews. Having some of the read agencies also looking at
5 the documentation once its submitted as opposed to waiting
6 for staff to prepare a written product before they review
7 it.

8 We are not telling you what to do or how to do it,
9 I think what we are asking you to do is perhaps try to think
10 outside of the box to the extent that your process and the
11 structure within the Commission allows you to do so and
12 incorporate that into whatever request it is that you think
13 you might need to make of the Committee for an extension of
14 time.

15 MS. De CARLO: Thank you, Ms. Vaccaro, and we will
16 keep that in consideration. And trust me, we will do all
17 that we can to get this document out as soon as possible.

18 I just want to make one note on the biological
19 section about the paradigm of us releasing it with a read
20 comment after publication. Generally in the past we have
21 had some of the read agencies as co-authors on our
22 Biological Resources analysis so we may have to take that
23 into consideration too, to what extent we do need their
24 input to provide a document that is fully supported by
25 technical analysis. But we will keep all your ideas in mind

1 and try to release a PSA as soon as possible, given the
2 project change.

3 PRESIDING MEMBER PETERMAN: And Hearing Officer,
4 if I may. I also will encourage applicant, if they can get
5 anything done sooner to do so as well. Because I am
6 sensitive to the fact that this is a tight time line and
7 that there is a lot that is coming in on the 23rd that is of
8 importance.

9 MR. ELLISON: Thank you, Commissioner; if I could
10 just respond to that. Let me assure you first and foremost
11 we are absolutely doing that. This whole change is aimed at
12 staying on schedule. So that is of paramount importance as
13 we have said throughout this proceeding.

14 The second comment I would like to make is this.
15 The read surveys that we agreed to do, the additional read
16 surveys, are coming in at the end of this month, June. So
17 all of that substantive information will be available at the
18 end of June. And I will say that at least it is the opinion
19 of our biologist that it doesn't suggest any substantially
20 different conclusions than the surveys that we have done
21 some time ago.

22 The third point I would make is this. We have the
23 same logistical problem that the staff has. We're dealing
24 with a document of equivalent size with equivalent layers of
25 review and authorship. It's essentially the same kind of

1 activity on our side that the staff is engaged in in the
2 PSA. And there is a sharp distinction in my mind between
3 the time that it takes to cross all the Ts, dot all the Is,
4 get the document in perfect order and reviewed and get it to
5 staff, which is what we have been talking about.

6 Versus the time in which we can respond to staff
7 questions, such as the one that Ms. De Carlo raised about
8 microfill woodlands. We can answer those questions right
9 now, today. We can talk to staff, provide information about
10 the effect of these changes on, you know, the sort of big
11 ticket kinds of questions that are material, as opposed to
12 the staff having to wait to see the project description
13 changed in every single chapter when we send that back.

14 So I don't want to suggest that none of the
15 changes that are coming in, that they are all administerial,
16 but it's certainly -- staff has worked very cooperatively
17 with us. I don't want to suggest anything differently than
18 that. And we, in turn, want to cooperate with staff. And
19 so don't feel -- I hope the staff understands that we are
20 prepared to provide as much information as we can, as fast
21 as we can, and we can address these questions such as the
22 microfill woodlands right now if you want.

23 HEARING OFFICER VACCARO: Actually we can't
24 because that is not what today is for.

25 MR. ELLISON: Okay.

1 HEARING OFFICER VACCARO: And indeed it's not just
2 that that's not what is noticed, that is something that,
3 again, I think there has got to be a public participatory
4 process that gives everyone who is interested a full and
5 reasonable opportunity to bring all of their questions for
6 the applicant to answer, not just staff.

7 And so we appreciate the offer and I think -- I
8 don't think the Committee in any way expects that staff and
9 applicant, Center for Biological Diversity, won't continue
10 along the path that has already been started, participating
11 in workshops and sharing information. But today isn't the
12 forum for that.

13 With that, though, we are going to turn to
14 Ms. Belenky who has very patiently been listening to this
15 conversation. I think, Ms. Belenky, I hope you can
16 appreciate that we start with applicant and staff,
17 particularly on these topics, because the staff is going to
18 be preparing the staff assessment. However, staff isn't the
19 only entity who is going to be evaluating these matters, we
20 understand that you will be as well. So this is your
21 opportunity to ask questions and make comments. But I think
22 my last comment to Mr. Ellison reminds everybody of what the
23 scope of this proceeding is and what it isn't. So I think
24 with that, Ms. Belenky, why don't we hear from you.

25 MS. BELENKY: Thank you. I wanted to comment

1 specifically on this discussion you just had and on the idea
2 that was raised that -- of the rolling, sort of rolling out
3 the review and having the PSA not include really a full
4 evaluation. And the Center has objected to this in the past
5 and I wanted to restate on the record our objection. We
6 believe that the PSA, to the extent it is a singular
7 document, it is very important for public notice and public
8 understanding of this process.

9 And while I understand that it is -- the Energy
10 Commission does change things as they move forward and they
11 very much want changes to come if they can resolve issues.
12 At the same time that has repeatedly created a situation for
13 the public, and I get this feedback constantly from my
14 members, that they do not know what is going on and cannot
15 keep up with the process. And we believe that the PSA is
16 one of the important documents that the public can see.

17 To the extent that the FSA would be a more fully
18 realized document, that's fine. But that is very late in
19 the process relatively and it does not give the public a
20 chance to really engage with to the process. And so I feel
21 it is very important that I object on the record to anything
22 that would imply that the PSA should not be a complete
23 document on the actual proposal at the time it is issued.

24 PRESIDING MEMBER PETERMAN: Ms. Belenky, this is
25 Commissioner Peterman. I just wanted to say thank you for

1 putting that objection on the record again.

2 MS. BELENKY: Well, I might be confused as to what
3 else you are going to -- is there going to be more issues
4 dealt with today or was this the sole issue?

5 HEARING OFFICER VACCARO: I'm sorry, I didn't
6 catch what you said. I heard part of it and then I didn't
7 understand a word or two. Would you please repeat that.

8 MS. BELENKY: Sure. I'm just trying to find out
9 what other issues we're dealing with today and if this is my
10 only chance to raise any issues.

11 HEARING OFFICER VACCARO: This is the opportunity
12 for the parties to provide us with status, raise their
13 concerns about where we are right now in the process and
14 what they see as next steps or what's coming up on the
15 horizon. So if in fact there is something else that you
16 would like to say with respect to the topics that have been
17 raised or if there is an additional issue that you believe
18 the Committee and the parties need to be aware of, we would
19 welcome your comments at this time.

20 MS. BELENKY: Okay, thank you. I just -- this may
21 not be the appropriate forum, it's a little confusing even
22 to me after several years of working with the Commission.
23 But we are somewhat concerned about the presentation that
24 was made by the applicant to the Commission -- to the
25 Committee regarding other projects in other places. And we

1 did put in a data request to get more information about
2 those projects but the response did not provide actual data
3 or expert opinion that is founded in actual data. And we
4 are extremely concerned that this has already been put
5 before the Committee without that grounding. And that it is
6 inappropriate at this point (inaudible).

7 HEARING OFFICER VACCARO: I am never shy to admit
8 when I don't know something and this is one of those
9 opportunities, Ms. Belenky. I think I am not quite certain
10 what submission -- I don't know what you are referring to
11 that the applicant has put before the Committee, unless you
12 are speaking of data responses and data requests. If not,
13 you know, if you could please clarify and give us a better
14 sense of what it is that you are referring to so that I
15 think the applicant at least can make some sort of
16 responsive comment.

17 MS. BELENKY: Yes. At one of the workshops the
18 applicant had a slide presentation that I believe is now --
19 I think is on the website. And it compared this potential
20 project to a project in Israel and I believe one other
21 project. But they did not provide any underlying data and
22 made a lot of statements about how they would compare and
23 about the impacts of those projects without providing any of
24 the underlying actual information and data.

25 HEARING OFFICER VACCARO: Okay, I think that's

1 helpful. I guess the follow-up question I have is, is that
2 something that you on behalf of the Center for Biological
3 Diversity have addressed? Have you asked for this
4 additional empirical, underlying information in a data
5 request that has been served on the applicant?

6 MS. BELENKY: Yes. And the response was not --
7 well, we would say it was unresponsive. As I said, this may
8 not be the proper time to address it but we do have this
9 ongoing concern that statements are made without any basis.

10 PRESIDING MEMBER PETERMAN: This is a clarifying
11 question, Hearing Advisor and Ms. Belenky. Was this at a
12 staff workshop specifically you're referring to, this
13 presentation?

14 MS. BELENKY: Yes, I think it was March 15th. But
15 it was posted on the website as well.

16 HEARING OFFICER VACCARO: Okay, okay, thank you,
17 Ms. Belenky. I think what you have done is you have given
18 us context. What you have also done, which is very
19 important, is according to what you have said, you have made
20 a request of the applicant to address those concerns by
21 providing data. The applicant gave a response that in your
22 view is inadequate.

23 And I think you are aware from prior participation
24 in our proceedings of the data request/data response process
25 and how to bring this matter to the Committee if it is

1 something that requires Committee resolution. So I would
2 invite your attention, if you haven't already looked at
3 them, to the Commission's regulations for bringing this
4 matter to the Committee's attention by way of a formal
5 request or motion, assuming that you are still within the
6 allowed time frames.

7 That said, what we are hearing from the applicant
8 today is that they are going to be submitting additional
9 documents. And we started this meeting talking about the
10 staff's request for an opportunity to submit data requests
11 on this new information as well. And of course that's
12 something that the Center for Biological Diversity will also
13 have an opportunity to do.

14 Please don't misunderstand me as saying that you
15 can now ask questions in the second instance that you
16 probably should have asked in the first. That's not what I
17 am saying. What I am saying is handle the issue with
18 respect to the initial data response/data request but also
19 understand that you will have an additional opportunity to
20 ask questions on the newly submitted information.

21 So is there anything else that you would like to
22 add, Ms. Belenky?

23 MS. BELENKY: No, thank you.

24 HEARING OFFICER VACCARO: Okay. Mr. Ellison, is
25 there anything that you felt the applicant needed to say in

1 response to Ms. Belenky?

2 MR. ELLISON: Well, just three things. One, we
3 believe we have responded sufficiently to the data requests
4 that have been submitted to us.

5 Two, that we welcome and encourage -- we will
6 provide as much information as we can. And believe me, this
7 is a high priority for us. We have been working on this to
8 provide information about the project in Israel, the same
9 technology in Israel, as well as similar technologies
10 elsewhere. We think that the real world experience on the
11 ground of this actual technology or technology very similar
12 to it is the best evidence available to all parties about
13 what the impacts of solar flux and heating and collision and
14 all those issues relative to avian impacts is. So we
15 believe that not only have we done that but we look forward
16 to providing more information to all parties about the other
17 projects that were referenced.

18 And lastly I would say that none of the changes
19 that we have been talking about in the elimination of RMS
20 III in any way changed this issue at all. They are not at
21 all relevant to this question.

22 PRESIDING MEMBER PETERMAN: I'll just add here,
23 this is Commissioner Peterman, that Ms. Belenky, you raised
24 a concern about Committee prejudice. And I'll just add that
25 we are still waiting for staff analyses and we have not

1 considered evidence and so that is not a perspective I have
2 a concern with, about being prejudiced about anything at
3 this point.

4 MR. ELLISON: And if I could just add to that, we
5 had this discussion of the Preliminary Staff Assessment. I
6 would remind everybody that we are talking about a
7 Preliminary Staff Assessment that leads to a Final Staff
8 Assessment that leads to evidentiary hearings, that leads to
9 a Presiding Member's Proposed Decision and that only then
10 leads to a Proposed Decision. So there are many
11 opportunities for everyone to comment on all of these things
12 going forward.

13 HEARING OFFICER VACCARO: Okay, it seems like we
14 have exhausted some of these topics. I see two microphones
15 on though, Mr. Martinez and Ms. De Carlo, yes.

16 MS. De CARLO: I just wanted to put forth one last
17 comment on this issue of the PSA schedule. I just don't
18 want the Committee to leave here with the impression that
19 staff is just sitting back and waiting for the filings. We
20 are actively contacting the applicant and working with them
21 to get the information we believe we need about the new
22 project to continue writing the PSA sections until we
23 actually get the final documentation.

24 And we have attempted to do in Cultural Resources.
25 To winnow down, to identify what potential cultural sites

1 we can now eliminate from our consideration because they are
2 on the third phase and no longer in potential jeopardy.
3 Unfortunately we haven't had much success in getting
4 feedback from URS, the applicant's consultant, to provide us
5 with that information.

6 We have had some success ourselves going through
7 it and trying to identify the locations of the sites
8 identified in the AFC and crossing them off because they are
9 clearly within the Phase III, so we are doing all that we
10 can to get the information that we need to further process
11 the PSA.

12 I just want to make sure that there is no
13 impression that we're just, okay, well we've got a month to
14 twiddle our thumbs until we have to start work again.

15 HEARING OFFICER VACCARO: We know better.

16 MR. MARTINEZ: I wanted to add a little bit more
17 on the PSA schedule and then just generally, because it is a
18 status conference, on the status of some of the outstanding
19 issues that we raised during the issue identification phase.
20 And I will try to go through those quickly.

21 With respect to air quality. New modeling files
22 emission information is going to need to be generated with
23 the project change. Hopefully that is going to be submitted
24 with the late July submittal because air quality is in that
25 last grouping.

1 But typically what happens is the local air
2 quality district needs to prepare their Preliminary
3 Determination of Compliance and then that document comes to
4 us and we can fold in their conditions and make sure that we
5 meet all their LORS. We may have prepared PSAs in the past
6 without that, I'm not sure. But with this schedule, if we
7 were to stay in August, that couldn't be completed with the
8 local air district's input.

9 With that said, I am told by staff that they don't
10 anticipate any air quality impacts that couldn't be
11 mitigated but just that that process of working with the
12 local air district and having their document out and folding
13 it into our document, it won't be done. I mean, not with
14 the information coming in in late July. So that's one item
15 I want to bring to your attention.

16 With respect to biology. There are some spring
17 surveys that I believe the information will be provided at
18 the end of this month. So that's going to be a good piece
19 of information that we can fold into the PSA and it was
20 something we had anticipated not having the full year of
21 surveys but whatever we could get in. So I believe that's
22 on track and we look forward to reviewing that.

23 The energy flux information, which is something
24 Ms. Belenky was alluding to and the applicant. I wanted to
25 give you a real brief understanding of the issue that we are

1 concerned about as staff. And that is just there is an
2 energy field, if you will, within and around the project
3 site that is generated from the sun's energy bouncing off
4 the heliostats and back up. So there's this energy in that
5 area and that energy level varies and different things
6 affect that.

7 So my understanding is the ambient air temperature
8 really doesn't change but the energy level there is
9 different. And so if there is an object that can absorb
10 that, then depending on what the energy level is in that
11 area, in the case of a bird, it could impact the bird. So
12 we have asked the applicant to provide a 3D model showing us
13 the contours of the energy level in and around the area so
14 that we can try to understand if there is or not an impact
15 to birds and to what extent.

16 And the applicant -- we have asked for this
17 information before. The applicant has provided this
18 information to a certain degree; we have had workshops on
19 it. But we have had to work cooperatively between our
20 biology staff and our engineering staff to understand the
21 science behind it. You know, we have our biology staff that
22 understands the birds and our engineering staff that
23 understands the energy. And so we're trying to get that
24 information and the applicant is doing their best to do
25 that. Unfortunately that information isn't going to be

1 coming to us until July 20th.

2 And so we have concerns and we have reason to
3 believe, at least at this level, that there's going to be a
4 large volume of area that is in a high-energy zone that
5 could impact avian species. What exactly that means we
6 don't know until we receive the data and analyze it. That
7 kind of information may not be able to be rolled into the
8 PSA, unfortunately, if we were to maintain an August
9 deadline. So I wanted to make you aware. That's a really
10 integral piece of information that we're waiting for.

11 The other thing I wanted to make the Committee
12 aware of was the LEDPA. The LEDPA is the Least
13 Environmentally Damaging Practicable Alternative, that's a
14 mouthful. And it's basically an alternatives analysis
15 exercise the Army Corps of Engineers does to try to look for
16 an alternative that least impacts US waters. And there's
17 quite acres of US waters on this particular project.

18 Earlier on when we were going to do what we
19 thought was a joint document with BLM we were under the
20 impression that BLM as the federal lead agency would be
21 working cooperatively with the Army Corps and work on a
22 LEDPA in cooperation with the alternatives analysis that the
23 NEPA process requires.

24 When the schedule came out and we weren't able to
25 continue working jointly with the BLM -- in part, if I go

1 back a little, there is something called a Plan of
2 Development. It's kind of like the AFC that's submitted to
3 the Energy Commission. It's a POD and it goes to the BLM.
4 And that is -- when that becomes acceptable to the BLM that
5 kind of kicks off their environmental process on the
6 project. And there has been an iterative process between
7 the applicant and the BLM on getting the POD to an
8 acceptable point where the BLM can move forward.

9 And with the most recent change with the project
10 northern plant on BLM land being excluded that changes the
11 project, changes the POD. And my understanding as of a
12 couple of days ago is that that revised POD has not been
13 submitted to the BLM so the BLM can't file a Notice of
14 Intent and kick off their process. So it doesn't -- it
15 hasn't allowed us over the past several months to work very
16 closely with the BLM because they don't feel like they've
17 got a project that they can work on.

18 HEARING OFFICER VACCARO: I think you raise an
19 excellent point. Just looking at a table that was presented
20 in the AFC that sort of identifies the differences between
21 the three on-site alternatives, it's identifying that land
22 ownership is MWD only it looks like for the -- so is this
23 the -- I mean, I'm trying to understand what's going to be
24 on BLM land under this Alternative 3.

25 I mean, is that reduced in some fashion? Is any

1 of it on BLM land? I mean, again, without having this
2 information I think the Committee is sort of hindered in
3 some of the questions that it can ask. But that's sort of
4 an important issue, particularly because you're raising that
5 there's still work for BLM to be doing.

6 MR. MARTINEZ: The transmission line is still on
7 BLM land. Correct me if I'm wrong, Todd. As a connected
8 action, even though really the power plants and all the
9 common facilities are on MWD private land, because the
10 transmission corridor is on BLM land, BLM has to analyze the
11 whole of the project as a connected action.

12 HEARING OFFICER VACCARO: Okay, so there is no
13 change to that then. The transmission line will still be on
14 BLM land.

15 MR. STEWART: Right. The transmission line and
16 the access road will be on BLM land. That's it.

17 HEARING OFFICER VACCARO: Okay. Thank you for the
18 clarification. That puts into context, you know, what
19 you're saying.

20 MR. MARTINEZ: Okay.

21 HEARING OFFICER VACCARO: It helps us understand
22 it a little bit more.

23 MR. ELLISON: If I could just add. The revised
24 POD is going in in two days.

25 MR. MARTINEZ: Okay, that's fine. I mean, we

1 were -- when we first had our issues ID we thought the POD
2 was going to be ready in January. So, you know, that's just
3 a processing thing between the applicant and the BLM. We
4 are just moving forward with the best we can with the
5 information we have.

6 So with respect to the LEDPA, I had mentioned that
7 we were under the impression that the BLM was going to be
8 taking the lead as the federal lead working with the Army
9 Corps. With the most recent conversations with BLM we
10 understand that may not be the case because they are just
11 doing -- now that the BLM land is just the transmission line
12 and the access road. And this is all kind of coming about
13 in the last few days.

14 In recent discussions with the Army Corps, our
15 understanding -- and maybe hopefully the applicant can help
16 us out. The applicant would be filing with the Army Corps
17 for this process and they said they haven't received an
18 application. So we're a little up in the air on that
19 process.

20 What I guess I would suggest to the Committee from
21 our standpoint is the concern is, if the Commission were to
22 approve a project sometime next year under a certain
23 configuration and then the Army Corps goes through their
24 process and approves a LEDPA that's different, we have a
25 problem. As I understand it the applicant would need to

1 come back to the Commission and amend their project to be
2 consistent with the LEDPA or they need to go back to the
3 Army Corps and somehow convince them that the LEDPA is
4 actually what the Commission approved. That's a risk that
5 the applicant, you know, has in their court.

6 And so maybe they have it all lined up and they
7 understand it and it's something I don't understand. But I,
8 as I understand it today, that's the concern I wanted to
9 relate to the Committee. And certainly if the applicant has
10 anything to add I can either finish going through my items
11 or I don't know if you have any questions that they might be
12 able to respond on that issue.

13 HEARING OFFICER VACCARO: Well I think this is --
14 right now I think you presented --

15 MR. MARTINEZ: Just going through.

16 HEARING OFFICER VACCARO: -- that you felt it was
17 important for the Committee at this time to understand some
18 of the more pertinent issues before staff on some of the
19 previously, you know, sort of raised matters in the EIR.

20 MR. MARTINEZ: Right.

21 HEARING OFFICER VACCARO: So if we could continue
22 to go through that but sort of a little bit more succinctly.
23 If the Committee believes it has questions for the
24 applicant it will ask them.

25 MR. MARTINEZ: Okay.

1 HEARING OFFICER VACCARO: If the applicant feels
2 compelled to say something in response, although really this
3 isn't necessarily the forum to engage in that. We are just
4 giving you the opportunity to hit things that you believe
5 are very important for the Committee to know at this time.

6 MR. MARTINEZ: Okay, understood. So
7 Paleontological Resources. The applicant's consultant
8 recently discovered, and it was included in the AFC, an
9 important paleontological resource, a strata. And we asked
10 in a data request for an understanding of the extent of that
11 strata, the depth and the lateral extent of it. And the
12 applicant objected to that but did provide some information.
13 So in the interim time we have we have been trying to work
14 with staff -- rather the applicant, to provide a plan of how
15 to get that information, that delineation for us.

16 Our understanding is that the methodology for
17 installing the heliostats, while it's less intrusive to the
18 land in general as far as it doesn't require a lot of
19 grading. It's actually just putting in a hole and vibrating
20 it in. It would destroy any paleontological resource that's
21 there, that particular methodology.

22 So the good thing is it doesn't cut down, you
23 know, it doesn't do the grading and the disturbance to the
24 land, it doesn't affect erosion and other things and we
25 acknowledge that that's a good thing. But there is an issue

1 with the methodology and trying to understand the extent of
2 this paleo resource.

3 So short of having an understanding of the extent
4 of that paleo resource we may be in a position to say that
5 this is a significant impact that's an unavoidable impact.
6 So we are still working with the applicant in trying to get
7 the information that we believe we need to come up with a
8 plan or, you know, avoidance or mitigation or what have you.

9 But that continues to be an outstanding issue.

10 With respect to cultural, and I Have kind of a
11 team of cultural staff here if you have any specific
12 questions. Because as Ms. Vaccaro said, I am not a
13 technical person as well, so I'll use that. But basically,
14 you may be aware, there's quite a few, over 400 cultural
15 resources. And perhaps quite a few of them go away with the
16 elimination of the northernmost plant but there's still,
17 nonetheless, a lot of stuff out there. And we had suggested
18 in March a schedule of between 14 and 32 months to go
19 through the process of evaluating all those cultural
20 resources.

21 The applicant has provided a plan to start that
22 process and that was submitted in late May, I believe. We
23 are just in the process of getting back to the applicant on
24 that plan and my staff -- rather the cultural staff have
25 some significant feedback they want to share with the

1 applicant because they believe the plan is deficient at this
2 time. That is the very beginning point before you actually
3 start conducting field work and doing the evaluation of all
4 the cultural resources.

5 We, just as an example, had suggested that that
6 process would start on April 1st and would take 90 to 120
7 days for this first kind of portion of the process. Again,
8 that's April 1st. We received it in late May, we've just
9 reviewed it. We're kind of really still at the starting
10 point.

11 And at the last status conference hearing the
12 Committee was made aware of the cultural concerns that we
13 had and asked the applicant if the time lines that were
14 suggested by staff were something they could beat. I think
15 they suggested that it doesn't take that long, we can throw
16 a lot of resources at it, et cetera.

17 We still are concerned that that's not going to be
18 able to happen. And we'll do what we can do for the PSA but
19 the evaluation of all the different resources out there is
20 time-consuming and there's a lot of resources out there.
21 It's a very large project. My understanding is there are
22 more resources than any other project that would be coming
23 before the Commission. If you want any more details about
24 that, you know, cultural staff is --

25 HEARING OFFICER VACCARO: At this time I don't

1 think we do but thank you for making cultural staff
2 available. I think as you go forward to your next items I
3 guess I would just caution you that this isn't an
4 evidentiary hearing. We are not at evidentiary hearings and
5 there really is no evidence before us.

6 I can appreciate that staff has concerns and I
7 think it's important for us to understand those. But as you
8 start to get into the detail and tell us what staff's point
9 of view is, I'm sure that Mr. Ellison and the applicant
10 would like to do the same. And then what we're basically
11 having is a mini cultural evidentiary hearing at a status
12 conference.

13 Where what we were trying to do was get the lay of
14 the land to understand where we are, where we're headed and
15 I think to get a sense of what issues might be presented in
16 a motion to the Committee asking for additional time on the
17 PSA. I think what you're doing is sort of supplementing
18 what Ms. De Carlo had already indicated earlier and what you
19 had indicated earlier as some concern areas. I think now we
20 are starting to get a little bit more into fine detail. And
21 I think what I would ask you to do is either stop now or
22 give us such a high level.

23 Because really the intent of today isn't to go
24 into this level of detail because it's not a hearing, it's
25 just to understand what is going on and what is going to

1 come. And all of these things can be in a motion and they
2 can be supported by a declaration from the cultural expert
3 or the visual or the air quality or the bio expert who
4 believes that there is an evidentiary point to be made so
5 that the applicant can respond in kind.

6 So I would just ask that we kind of avoid that,
7 hit the high points. Although I say that with the
8 understanding that this is important, I understand, for
9 staff to convey to the Committee where it sees some
10 potential issues. So I think -- we thank you for bringing
11 it to our attention.

12 MR. MARTINEZ: Okay.

13 HEARING OFFICER VACCARO: But this much more and
14 if you can do it in just a few more minutes.

15 MR. MARTINEZ: Okay. So the wrap up on cultural
16 is from a status standpoint is we still believe that our
17 original schedule is valid and we have a schedule to get an
18 FSA out in January. There are still outstanding issues,
19 okay.

20 I think the other two items. Land Use, we
21 understand that last week the applicant submitted an
22 application or an in-lieu conditional use permit application
23 to the county. I don't see that as really a scheduling
24 issue but it is something that we anticipate Riverside
25 County giving us feedback once they have an opportunity to

1 review that permit request from the applicant and we'll fold
2 it into our -- likely FSA process. That takes some time for
3 the county to review.

4 And lastly, Transmission System Engineering. A
5 Phase II Cluster Study is not anticipated until near the end
6 of the year in November. If it identifies downstream
7 impacts to facilities we may need to do additional
8 environmental review. We won't know that until we review
9 the Phase II study. And that concludes my comments.

10 HEARING OFFICER VACCARO: Thank you. I don't see
11 anyone on the applicant's side rushing to push their
12 microphone so I am hopeful that what that means is you have
13 heard what the Committee heard. Of course there's going to
14 be a record of what Mr. Martinez said. But at the end of
15 the day we need the environmental analyses to come out and
16 we need to have an evidentiary hearing to fully flesh out
17 all of these issues.

18 If there is some succinct, brief comment that you
19 believe is important to make, Mr. Ellison, you will have the
20 opportunity to do so, as will Ms. Belenky.

21 MR. ELLISON: Thank you. We will refrain from
22 responding to the things that the staff has said.

23 I will simply say that I want to correct one
24 possible misstatement we may have made earlier that the Air
25 Quality and Public Health submission will come in on the

1 11th, not any later than that.

2 And with that we are prepared to respond to any
3 questions that you might have based on what you just heard
4 but we will hold our fire for now.

5 HEARING OFFICER VACCARO: Ms. Belenky, hopefully
6 you are still on the line. If so is there anything that you
7 would like to say that is response to, in some fashion, to
8 staff's comments?

9 MS. BELENKY: No, I'm here. I am still here and
10 we don't have any comment. We just wanted to thank the
11 staff for their thorough investigation of the issues to
12 date.

13 HEARING OFFICER VACCARO: Okay, thank you. Unless
14 the Commissioners shake their heads or frown at me I think
15 this is a good time to wrap up party questions and comments.

16 We'll find out whether or not our visitor from BLM
17 might wish to begin our public comment period. And if not,
18 that's fine, no compulsion to do so but we are glad that you
19 are here and want to give you the opportunity if there is
20 anything that you would like to add to what's been said
21 today.

22 MR. PERRY: No, I don't have anything to add at
23 this moment, thank you.

24 HEARING OFFICER VACCARO: Okay, thank you. I look
25 around the room. Again I see mostly faces that are

1 associated with the Energy Commission but I have been
2 mistaken before. So if there are any individuals in the
3 room who wish to make a public comment at this time or
4 represent an agency and wish to make a comment you may do
5 so.

6 Okay, I am seeing none. So we will turn to the
7 telephone. I think we had Ms. North on the line. Is there
8 any comment that you wish to make?

9 MS. NORTH: No, I have no comments at this time,
10 thank you.

11 HEARING OFFICER VACCARO: Okay. Any other
12 representatives of local, state or federal agencies on the
13 telephone line? I know we had Fish and Wildlife Service on
14 the line as well. Is there a comment that you would like to
15 make?

16 MS. FRASER: Hi and thanks, this is Jody Fraser
17 with the Palm Springs Fish and Wildlife Office. I just want
18 to echo the comments made by CEC staff today about our
19 concerns about trying to really rush this process through.
20 And it is a challenge. We are working hard with the
21 applicant and the other read agencies to pull everything
22 together in a timely manner.

23 But I think the discussion here today and in
24 previous workshops just kind of brings attention to the time
25 lines of some of these priority renewable energy projects

1 not really matching up with what is occurring around
2 biological and cultural resources, et cetera. So I would
3 just encourage everybody to have patience and recognize that
4 we are all somewhat under duress because we are working on
5 multiple projects and trying to accommodate. So just keep
6 that in mind, thanks.

7 HEARING OFFICER VACCARO: Thank you. Anyone else
8 on the line who would like to make a comment?

9 I am hearing none but I will ask again. Anyone on
10 the line that would like to make a comment at this time?

11 Silence. So I think with that I will turn this
12 over to the Presiding Member to adjourn today's meeting.

13 PRESIDING MEMBER PETERMAN: Thank you, Hearing
14 Officer Vaccaro. Thank you for also running, as usual, a
15 very clear and focused hearing and keeping us on track.
16 Your presence will be greatly missed at the Commission. I'm
17 sorry it's the last opportunity I will have to work with you
18 in this forum but I do look forward to working with you in
19 the future.

20 We welcome Hearing Officer Ken Celli and we look
21 forward to working with him as well.

22 So with that, this hearing conference is
23 adjourned. We'll see you next time, thanks.

24 (The Status Conference was adjourned at 12:25 p.m.)

25 --oOo--

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of June, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

RAMONA COTA, CERT**478

June 27, 2012